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No. 80-1305

IN THE

Supreme Court of the United States

October Term, 1981

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO On the relation of PEDRO BAREZ, SECRETARY, DEPARTMENT OF LABOR AND HUMAN RESOURCES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

AMICUS CURIAE BRIEF OF THE STATE OF NEW YORK, JOINED BY THE COMMONWEALTH OF PENNSYLVANIA, IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

PAGE

Interest of *Amicus* 1

Summary of Argument 4

Argument

Point I—Puerto Rico has standing to sue in its *parens patriae* capacity to enjoin conduct injuring its quasi-sovereign interests 5

A. Petitioners' conduct has injured Puerto Rico's economy 5

B. Petitioners' conduct has injured the health and welfare of Puerto Rico's population 9

C. Puerto Rico has sued to vindicate interests of the Commonwealth, not as a volunteer for claims of individual citizens 13

Point II—Puerto Rico has standing to sue in its proprietary capacity to enjoin petitioners' interference with its responsibilities as a member of the Federal-State Employment Service system 14

Conclusion 17

TABLE OF AUTHORITIES

PAGE

Cases:

Alabama v. TVA, 467 F. Supp. 791 (N.D.Ala. 1979), *aff'd*, 636 F.2d 1061 (5th Cir.), *cert. denied*, 50 U.S.L.W. 3246 (Oct. 5, 1981) 6

Brewer v. Hoxie School District No. 46, 238 F.2d 91 (8th Cir. 1956) 15

Burch v. Goodyear Tire and Rubber Co., 554 F.2d 633 (4th Cir. 1977) 9

Carey v. Klutznick, 637 F.2d 834 (2d Cir. 1980) 3

Coleman v. Miller, 307 U.S. 433 (1939) 15

Commonwealth of Pennsylvania v. Glickman, 370 F. Supp. 724 (W.D.Pa. 1974) 10

Commonwealth of Pennsylvania v. Kleppe, 533 F.2d 668 (D.C. Cir.), *cert. denied*, 429 U.S. 485 (1976) 6, 9, 14

Commonwealth of Pennsylvania v. Porter, 659 F.2d 306 (3d Cir. 1981) (*en banc*), *pet. for cert. filed*, 50 U.S.L.W. 3175 (No. 81-465, Sept. 22, 1981) 3, 10, 16

Commonwealth of Puerto Rico v. S.S. Zoe Colocotroni, 628 F.2d 652 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981) 5

Commonwealth of Puerto Rico v. Snapp, 632 F.2d 365 (4th Cir. 1980) 7

Espinoza v. Stokely-Van Camp, Inc., 641 F.2d 535 (7th Cir. 1981) 15

Fontain v. Ravenel, 58 U.S. (17 How.) 369 (1855) 2

Georgia v. Pennsylvania R. Co., 324 U.S. 439 (1945) 2, 5, 11, 12

Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907) 2, 6, 12

PAGE

Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979) 10
Gomez v. Florida State Employment Service, 417 F. 2d 569 (5th Cir. 1969) 15, 16

Hawaii v. Standard Oil Co. of California, 405 U.S. 251 (1972) 2, 5, 6, 13, 14

In Re Debs, 158 U.S. 564 (1895) 2
In re Multidistrict Air Pollution Litigation, 481 F.2d 122 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973) 6

Jenkins v. S & A Chaissan & Sons, Inc., 449 F. Supp. 216 (S.D.N.Y. 1978) 7

Louisiana v. Texas, 176 U.S. 1 (1900) 2, 6, 9, 11

Maryland v. Louisiana, 101 S.Ct. 2114 (1981) ..6, 8, 11, 12, 13
Missouri v. Illinois, 180 U.S. 208 (1901) 8

New Hampshire v. Louisiana, 108 U.S. 76 (1883) 13
New York v. 11 Cornwell Co., 508 F. Supp. 273 (E.D. N.Y. 1981) 3
New York v. United States, 65 F. Supp. 856 (N.D.N.Y. 1946) (three-judge court), *aff'd*, 331 U.S. 284 (1947) 3, 11
Nuesse v. Camp, 385 F.2d 694 (D.C. Cir. 1967) 15

Pennsylvania v. New Jersey, 426 U.S. 660 (1976) 13
Pennsylvania v. The Wheeling & Belmont Bridge Co., 54 U.S. (13 How.) 518 (1852) 2
Pennsylvania v. West Virginia, 262 U.S. 553 (1923) ... 3, 5, 6

Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657 (1838) 2

PAGE

Washington Utilities Transportation Com'n v. F.C.C., 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975) 15

Statutes and Regulations:

8 U.S.C. §§ 1101, *et seq.* 9
29 U.S.C. §§ 49-49k 3, 9
29 U.S.C. § 49b(a) 15
29 U.S.C. § 49b(b) 10
29 U.S.C. § 49c 15
20 C.F.R. § 602.8 15
20 C.F.R. § 651.10 10
20 C.F.R. §§ 653.100-653.103 16
20 C.F.R. § 653.107 16
20 C.F.R. § 653.107(j) 16
20 C.F.R. Part 655 9
20 C.F.R. § 655.203 10

Legislative History:

Sen. Com. On Education and Labor, "Report on the National Employment Service," *Sen. Rep. No. 63*, 73d Cong., 1st Sess. (May 1, 1933) 16

Other Authorities:

Puerto Rico Dept. of Labor and Human Resources, Bureau of Labor Statistics, *Statistical Report* (1981) 8
The Federalist, No. VII (Hamilton Nov. 17, 1787) 2
U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings*, v. 29 n.1 (Jan. 1982) 8

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AMICUS CURIAE BRIEF OF THE STATE OF NEW YORK, JOINED BY THE COMMONWEALTH OF PENNSYLVANIA, IN SUPPORT OF RESPONDENT

Interest of *Amicus*

The State of New York and the Commonwealth of Pennsylvania submit this brief *amicus curiae* because they have a vital interest both in preserving a sovereign state's standing to sue in its *parens patriae* capacity, and in preserving a state's ability to sue to prevent unlawful interference with its obligations under federal law.

For nearly a century, this Court has recognized states' authority, as *parens patriae*, to seek federal judicial remedies for injuries to the health and welfare of their citizens.[1] During that time, this Court has repeatedly acknowledged that states possess *parens patriae* authority as an inherent attribute of sovereignty,[2] and that the framers preserved this aspect of state sovereignty and created the federal court system "so that adequate machinery might be available for the peaceful settlement of disputes between States and between a State and citizens of another State." *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 450 (1945). *Cf. Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907); *The Federalist*, No. VII (Hamilton Nov. 17, 1787).

In this case, Puerto Rico's interests have been harmed by petitioners' actions. As the Fourth Circuit recognized, for purposes of standing analysis, this case is clearly in line with the many cases in which this Court has held that a state has standing to sue in its *parens patriae* capacity. Indeed, this case, involving a state's efforts to enjoin violations of federal law that deprive its citizens of employment opportunities, underscores the need for *parens patriae* standing. It is important to New York and Pennsylvania,

1. While Louisiana v. Texas, 176 U.S. 1, 19 (1900) is generally regarded as this Court's first case explicitly recognizing states' *parens patriae* standing, the doctrine was implicit in many earlier cases. *See, e.g., In Re Debs*, 158 U.S. 564, 584-587 (1895); Pennsylvania v. The Wheeling & Belmont Bridge Co., 54 U.S. (13 How.) 518, 567 (1852); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 719-720 (1838).

2. Fontain v. Ravenel, 58 U.S. (17 How.) 369, 391-393 (1855) (Taney, Ch. J.); Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 257 (1972).

longstanding *parens patriae* litigants,[3] that this traditional avenue of protection for their citizens not be narrowed.

In addition, this case concerns a state's recourse to the federal courts to prevent direct interference with its responsibilities under federal law. In 1933, Congress responded to widespread unemployment, similar to that existing today, by enacting the Wagner-Peyser Act.[4] That Act created, *inter alia*, an interstate system of job services (the Federal-State Employment Service ["FSES"]), which gives workers who live in places with high unemployment access to jobs in states needing workers. New York and Pennsylvania, like Puerto Rico, have been longstanding participants in this system: accepting job orders from employers, recruiting unemployed individuals, and referring them to available jobs.

The unjustified refusals of petitioners—numerous Virginia apple growers—to employ workers from Puerto Rico seriously undermines the effectiveness of the Commonwealth's participation in the FSES system, and cannot be allowed to go unchallenged. Puerto Rico, New York, Pennsylvania, and any of the other participants in the FSES system must have recourse to the federal courts to protect their ability to participate effectively in that system.

3. *See, e.g.*, New York v. United States, 65 F. Supp. 856, 872 (N.D.N.Y. 1946) (three-judge court), *aff'd*, 331 U.S. 284 (1947); Carey v. Klutznick, 637 F.2d 834, 838 (2d Cir. 1980); New York v. 11 Cornwell Co., 508 F. Supp. 273, 276-277 (E.D.N.Y. 1981); Pennsylvania v. West Virginia, 262 U.S. 553, 591 (1923); Commonwealth of Pennsylvania v. Porter, 659 F.2d 306, 314 (3d Cir. 1981) (*en banc*), *pet. for cert. filed*, 50 U.S.L.W. 3175 (No. 81-465, Sept. 22, 1981).

4. 29 U.S.C. §§ 49-49k.

For these reasons, New York is filing this brief *amicus curiae,* joined by Pennsylvania, and is seeking leave to participate in oral argument,[5] urging affirmance of the Fourth Circuit's decision in this case.

Summary of Argument

The Commonwealth of Puerto Rico has alleged injury to at least two quasi-sovereign interests resulting from petitioners' actions, and is thereby entitled to sue in its *parens patriae* capacity. The Commonwealth's economy has been injured by petitioners' continuing unlawful refusal to employ migrant workers from Puerto Rico in conformity with the Wagner-Peyser Act and the federal regulatory scheme. In addition, petitioners' discrimination against workers from Puerto Rico has a deleterious effect upon the health and welfare of the entire Commonwealth community.

Moreover, Puerto Rico has standing to sue in its proprietary capacity to enjoin petitioners' conduct which prevents Puerto Rico from fulfilling its responsibilities under federal law as a member of the Federal-State Employment Service System.

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5. *See* Motion of *Amicus Curiae* State of New York to Participate in Oral Argument (January 28, 1982).

ARGUMENT

POINT I

Puerto Rico has standing to sue in its *parens patriae* capacity to enjoin conduct injuring its quasi-sovereign interests.

To have standing to sue as *parens patriae*, a state need only allege injury to a "quasi-sovereign" interest, *Hawaii* v. *Standard Oil Co. of California*, 405 U.S. 251, 258 (1972) —an interest that arises from a state's responsibility, as sovereign, to protect the "health, comfort and welfare" of its citizens. *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 592 (1923).[6] Petitioners' alleged conduct has injured the health and welfare of Puerto Rico's citizens: its workers have been unlawfully denied much-needed employment; the Commonwealth's economy has been harmed; and discrimination has been practiced against the Puerto Rican community. Thus, as the Fourth Circuit held, Puerto Rico has alleged sufficient injury to its quasi-sovereign interests to give it standing to sue in its *parens patriae* capacity.

A. Petitioners' conduct has injured Puerto Rico's economy.

There can be little question that a State has a legally cognizable, "quasi-sovereign" interest in protecting its economy.[7] Numerous cases in this Court and lower federal

6. Puerto Rico is a sovereign entity entitled, like all states, to sue to protect its citizens' welfare. *See* Com. of Puerto Rico v. S.S. Zoe Colocotroni, 628 F.2d 652, 670 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981).

7. Though many early *parens patriae* cases involved injury to a state's environment, *see* Georgia v. Tennessee Copper Co., 206 U.S.

(footnote continued on next page)

courts have recognized states' rights to sue for economic injuries. *Maryland* v. *Louisiana,* 101 S.Ct. 2114, 2125 (1981); *Georgia* v. *Pennsylvania R. Co.,* 324 U.S. 439, 450 (1945); *Alabama* v. *TVA,* 467 F. Supp. 791, 794 (N.D. Ala. 1979), *aff'd,* 636 F.2d 1061 (5th Cir.), *cert. denied,* 50 U.S.L.W. 3246 (Oct. 5, 1981); *In re Multidistrict Air Pollution Litigation,* 481 F.2d 122, 131 (9th Cir.), *cert. denied,* 414 U.S. 1045 (1973). *See also Hawaii* v. *Standard Oil Co. of California,* 450 U.S. 251, 259-260 (1972); *Commonwealth of Pennsylvania* v. *Kleppe,* 533 F.2d 668, 675 (D.C. Cir.), *cert. denied,* 429 U.S. 485 (1976). This case is no different.

The Commonwealth recruited 2,318 unemployed individuals who were willing and able to fill petitioners' job orders. Petitioners, in direct violation of federal law, simply refused to hire the vast majority of these workers (Cmpl. ¶¶ 64, 66, 67, 72, JA at 17, 20-23, 27),* and hired foreign laborers instead. Most of those few workers from Puerto Rico who were hired were unlawfully discharged shortly thereafter (Cmpl. ¶¶ 64, 69, 76, JA at 17, 25, 28). The economic injury to the 2,318 potential workers from petitioners' actions is obvious. The deleterious effect on Puerto Rico's economy is equally so: the Commonwealth loses tax revenue, unemployment increases, and, as a result, the Commonwealth is forced to support the unem-

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230, 237 (1907), contrary to petitioners' suggestion (Brief for Petitioners ["Pet. Br."] at 17 n. 4), this Court has never restricted quasi-sovereign interests to "interstate nuisances." *See* Louisiana v. Texas, 176 U.S. at 19 (embargo on commerce from Louisiana to Texas); Pennsylvania v. West Virginia, 262 U.S. 553, 592 (1923) (limitation on natural gas exportable from Pennsylvania).

* Citations are to plaintiff's second amended complaint ("Cmpl."), located in the Joint Appendix ("JA") at pp. 2-31.

ployed and their families at substantial cost to all its citizens.

This injury, compounded by repeated resistance over several years to Puerto Rico's efforts to secure jobs for its migrant workers in the annual east coast apple harvest (Cmpl. ¶ 61, JA at 16-17),[8] is sufficient to support *parens patriae* standing. However, the adverse economic impact of the growers' action does not stop here; petitioners' conduct has a devastating ripple effect.

In 1978, unemployment in Puerto Rico reached epidemic proportions.[9] Facing an almost total absence of available job opportunities on the island, many of the Commonwealth's unemployed citizens became dependent on jobs on the mainland. Obtaining these jobs required extensive efforts, both by the Commonwealth, which amended its laws to ensure Puerto Rican workers' eligibility for mainland jobs (JA 32-36), and by the workers themselves, who had to travel thousands of miles to seek employment.

It is not difficult to foresee the negative impact on Puerto Rico if petitioners' illegal actions are not remedied. Few, if any, of its citizens will be encouraged to seek mainland employment if they face potential harassment, unequal working conditions, or total rejection. As a result, the

8. *See also* Jenkins v. S&A Chaissan & Sons, Inc., 449 F.Supp. 216, 219-220 n. 3 (S.D.N.Y. 1978).

9. *See* Com. of Puerto Rico v. Snapp, 632 F.2d 365, 370 (4th Cir. 1980).

Commonwealth's severe unemployment problem will become worse.[10]

Petitioners do not dispute that Puerto Rico has alleged injury to a quasi-sovereign interest. They argue, however, that *parens patriae* standing is inappropriate because their actions in 1978 directly harmed "only" 2,318 workers. Pet. Br. at 19-20. This argument is without merit. Injury to a state's quasi-sovereign interest, as correctly recognized by the Fourth Circuit, "has never been cast [as] a hard and fast game of numbers," 632 F.2d at 370. A state need not wait for unlawful activity to affect tens, or perhaps hundreds of thousands of workers before it is entitled to protect its quasi-sovereign interests.

By focusing only on those directly harmed by their conduct, the growers also ignore settled precedent that it is the effect of their actions on the general welfare that gives rise to *parens patriae* standing. *Maryland* v. *Louisiana*, 101 S.Ct at 2124 (". . . [a state] may act as the representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way"); *Missouri* v. *Illinois*, 180 U.S. 208, 241

10. Puerto Rico's annual average unemployment rate has been and continues to be nearly triple that of the United States:

	Puerto Rico	*Total United States*
1976:	19.5	7.7
1977:	19.9	7.0
1978:	18.1	6.0
1979:	17.0	5.8
1980:	17.1	7.1
1981:	19.9	7.6

U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings*, v. 29 n. 1 at p. 9 (Jan. 1982); Puerto Rico Dept. of Labor and Human Resources, Bureau of Labor Statistics, *Statistical Report* (1981).

(1901); *Louisiana* v. *Texas*, 176 U.S. at 19. The fact that some individuals experience greater harm from challenged conduct, and potentially reap greater benefits from a state's suit, is inherent in all *parens patriae* actions. *Com. of Pennsylvania* v. *Kleppe*, 533 F.2d at 674-675 ("And even where the most direct injury is to a fairly narrow class of persons, there is precedent for finding state standing on the basis of substantial generalized economic effects"); *Burch* v. *Goodyear Tire & Rubber Co.*, 554 F.2d 633, 634-635 (4th Cir. 1977).

Furthermore, even if the number of citizens directly injured were a critical factor, the alleged injury in this case to more than two thousand citizens—as well as a history of similar unlawful acts by these petitioners—is surely sufficient to justify the Commonwealth's *parens patriae* standing.

B. Petitioners' conduct has injured the health and welfare of Puerto Rico's population.

The Commonwealth has alleged that, in violation of federal law,[11] the growers unlawfully hired temporary foreign workers rather than available Puerto Rican workers, and subjected those few Puerto Rican workers who were hired to employment conditions more onerous than those faced by other temporary workers (Cmpl. ¶ 70, JA at 25-26). Either on account of the workers' race, or their na-

11. Wagner-Peyser Act, 29 U.S.C. §§ 49-49k; Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101 *et seq.*; and their implementing regulations, 20 C.F.R. Part 655.

tional origin, it is alleged that petitioners unlawfully discriminated against workers from Puerto Rico.[12]

The harmful effect of petitioners' discriminatory employment practices reaches beyond the several thousand direct victims. It touches the entire Puerto Rican community. *See Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91, 110-111 (1979). It is particularly destructive here because the Commonwealth has been a participant in the employment process in which the discrimination occurred. If Puerto Rico remains indifferent to the growers' discriminatory treatment of its workers, it does so at the risk of appearing to condone that treatment. Legal action by the Commonwealth is part and parcel of its willingness and ability to press for equality under law.

Certainly preventing unlawful employment discrimination is part of a state's ability—indeed, its responsibility —to protect the health and welfare of its citizens; and several lower courts have agreed with this conclusion in the specific context of *parens patriae* standing. *Commonwealth of Pennsylvania* v. *Glickman,* 370 F.Supp. 724, 727-728 (W.D.Pa. 1974). *See also Commonwealth of Pennsylvania* v. *Porter,* 659 F.2d 306, 316-317 (3d Cir. 1981) (*en banc*),

12. 20 C.F.R. § 655.203 provides:

> As part of the temporary labor certification application, the employer shall include assurances, signed by the employer that:
>
> (c) The job opportunity is open to all qualified U.S. workers without regard to race, color, national origin, sex or religion, and is open to U.S. workers with handicaps who are qualified to perform the work. No U.S. worker will be rejected for employment for other than a lawful job related reason.

The term "U.S. worker" includes workers from Puerto Rico. 29 U.S.C. § 49b(b); 20 C.F.R. § 651.10.

pet. for cert. filed. 50 U.S.L.W. 3175 (No. 81-465, Sept. 22, 1981).

Parens patriae suits seeking redress of unlawful discrimination are not new to this Court. The trade barriers, antitrust violations and other impediments to the free flow of goods and services challenged in this Court's *parens patriae* cases were all attempts to discriminate against a plaintiff state's goods and services. Louisiana gave an unlawful preference to natural gas consumed by its citizens at the expense of gas shipped to other states in *Maryland* v. *Louisiana*, 101 S.Ct. at 2121-2122; Texas attempted to quarantine commerce emanating from Louisiana in *Louisiana* v. *Texas*, 176 U.S. at 19, 22; and the Pennsylvania Railroad sought to charge higher rates for goods shipped into and out of Georgia than for those shipped elsewhere in the nation in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. at 443-444. *See also New York* v. *United States*, 65 F.Supp. at 872.

So too here, petitioners have erected a barrier between Puerto Rico and the mainland through which individuals —as opposed to goods—may not freely pass. If impediments to the free flow of a state's trade are sufficient, certainly unlawful impediments to the free travel of a state's workers in search of employment likewise entitle a state to sue as *parens patriae*. As stated by this Court over fifty years ago, and recognized as recently as last Term:

> If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. Discriminatory rates are but one form of trade barriers. They may cause a blight no less

> serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers. They may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets. . . . Georgia as a representative of the public is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction.

Georgia v. *Pennsylvania R. Co.*, 324 U.S. at 450-451.[13] *See Maryland* v. *Louisiana*, 101 S.Ct. at 2124-2125.

Parens patriae suits were permitted precisely to afford states a remedy for unlawful trade barriers. *See Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). The injury to Puerto Rico from barriers placed on the travel of its work force is at least as substantial a basis for according it standing as the economic bases found in these other cases.

13. Where, as here, the original jurisdiction of this Court is not invoked, there is even less reason to restrict *parens patriae* standing.

C. Puerto Rico has sued to vindicate interests of the Commonwealth, not as a volunteer for claims of individual citizens.

Petitioners assert that this lawsuit is merely an excuse for Puerto Rico to champion individual claims in federal court (Pet. Br. at 24-25). However, the fact that the complaint alleges a series of unlawful actions by numerous defendants against numerous individuals does not determine standing to sue. All *parens patriae* actions ultimately arise from conduct against certain persons or corporations. The determinative factor is not whether defendants' action affects every entity or citizen in an identical fashion, but rather whether the sum total of defendants' conduct causes a substantial injury to the state's health and welfare. *Maryland* v. *Louisiana*, 101 S.Ct. at 2124.

To distinguish legitimate *parens patriae* lawsuits from those seeking to vindicate individual interests, a crucial factor is whether injunctive or monetary relief is sought. *Hawaii* v. *Standard Oil Co. of California*, 405 U.S. at 261. Where a state has sought damages, this Court has denied standing because a state may not act as a collection agency for the monetary claims of its individual citizens. *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 665 (1976); *New Hampshire* v. *Louisiana*, 108 U.S. 76, 91 (1883). By contrast, actions such as this one for declaratory and injunctive relief only, alleging harm to a state's quasi-sovereign interests, have been permitted. *See Hawaii* v. *Standard Oil Co. of California*, 405 U.S. at 258 (citing cases).

Petitioners' protestations to the contrary notwithstanding, potential or actual lawsuits by private individuals do not foreclose this *parens patriae* action. As Puerto Rico has not sought damages, there is no danger of subjecting petitioners to "duplicative recoveries," *Hawaii* v. *Standard Oil Co. of California*, 405 U.S. at 264. And, should Puerto Rico succeed in enjoining the growers from violating federal law (JA 31), such an injunction would have no more or less effect on the growers' rights than "100 injunctions." *Hawaii* v. *Standard Oil Co. of California*, 405 U.S. at 261.[14]

POINT II

Puerto Rico has standing to sue in its proprietary capacity to enjoin petitioners' interference with its responsibilities as a member of the Federal-State Employment Service system.

A state, like any entity, may sue for injuries to proprietary interests, *see Commonwealth of Pennsylvania* v. *Kleppe*, 533 F.2d 668, 671 (D.C. Cir.), *cert. denied*, 429 U.S. 485 (1976). Conduct such as petitioners' that impairs a state's ability to discharge its obligations under federal law "is the equivalent of 'personal stake,' 'injury in fact,' or 'concrete injury' that would support standing of

14. A state need not, as petitioners suggest, rely upon the possibility that an aggrieved individual might file an action including a claim for injunctive relief. Here there is no guarantee that any individual refused employment in the 1978 apple harvest would wish to work in subsequent harvests, and therefore be interested in filing such a suit. Moreover, an individual worker's interests could dictate settlement relinquishing injunctive claims, which, from the Commonwealth's point of view, could not be compromised.

a private plaintiff." *Washington Utilities Transportation Com'n* v. *F.C.C.*, 513 F.2d 1142, 1149, 1150-1151 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); *see Coleman* v. *Miller*, 307 U.S. 433, 442-445 (1939).[15] Here, Puerto Rico's responsibilities and duties as a participant in the FSES system are clear. *See Espinoza* v. *Stokely-Van Camp, Inc.*, 641 F.2d 535, 540 (7th Cir. 1981); *Gomez* v. *Florida State Employment Service*, 417 F.2d 569, 575 (5th Cir. 1969). Equally clear is its inability to meet these responsibilities if petitioners' conduct is not enjoined.

Pursuant to § 4 of the Wagner-Peyser Act, Puerto Rico has established an employment service to assist the United States Department of Labor in providing job-related services to its workers, 29 U.S.C. § 49c, and particularly to facilitate "interstate recruitment and movement" of migrant agricultural workers, 20 C.F.R. § 602.8 (1981).[16] To fulfill its duty to provide outreach to its migrant workers, the Commonwealth obtained job orders from the United States Department of Labor and recruited 2,318 individual workers to pick apples in the 1978 harvest (Cmpl. ¶¶ 61-65, JA 16-18). Puerto Rico was not, as petitioners would have this Court believe, an idle spectator to

15. *Cf.* Brewer v. Hoxie School District No. 46, 238 F.2d 91, 99 (8th Cir. 1956); Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967):

> This admixture of national and state policies, . . . yields the the corollary that a state official directly concerned in effectuating the state policy has an "interest" in a legal controversy . . . which concerns the nature and protection of the state policy.

16. *Cf.* 29 U.S.C. § 49b(a): ". . . the [United States Employment Service] shall also assist in coordinating the public employment offices throughout the country and in . . . *maintaining a system for clearing labor between the several States.*" (emphasis supplied)

a free-market bargaining process between the growers and potential employees;[17] rather, as provided by the regulations, it functioned as an employment agency.[18]

There can be little doubt that petitioners' unlawful refusals to hire Puerto Rico's migrant workers prevented the Commonwealth from fulfilling its role in this federal-state cooperative scheme.[19] In these circumstances, the Commonwealth is entitled to sue to enjoin interference with its obligations under the FSES system and with the protections afforded migrant workers.[20]

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17. The Commonwealth is particularly involved in this process in that, based upon advice of the United States Department of Labor, it instructed all workers who had not already left Puerto Rico not to travel to Virginia (Cmpl. ¶ 66, JA 22).

18. *See* 20 C.F.R. §§ 653.100-653.103, 653.107, and especially § 653.107(j).

19. *See* Gomez v. Florida State Employment System, 417 F.2d at 571-572:

> The Act's basic objective was to establish an interstate system for the recruiting and transfer of labor. The Act, quite obviously, was also intended to offer some protection to those employees who shift about the country . . .
>
> These objectives were to be accomplished through that well-known device of "cooperative federalism", and grant-in-aid system.

See also Sen. Com. on Education & Labor, "Report on National Employment Service," *Sen. Rep. No. 63*, 73d Cong., 1st Sess. (May 1, 1933).

20. *Cf.* Commonwealth of Pennsylvania v. Porter, 659 F.2d at 315.

Conclusion

For all of the reasons stated above, the Fourth Circuit's decision should be affirmed.

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Respectfully submitted,

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